IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Civil Revision No. 86 of 2006

1. Naresh Kumar S/o Sri Baburam
2. Ajay Goel, S/o Sri Shyam Lal
3. Rajkumar S/o Sri Natthu Singh
4. Salim S/o Sri Jalaluddin
5. Krishanpal S/o Sri Kaluram
   R/o Village Ruhalki Dayalpur
   Pargana Bhagwanpur
   Tehsil Roorkee
   District Haridwar
   Respondent Nos. 1 to 4 is Village Bhagwanpur
   Pargana Bhagwanpur
   Tehsil Roorkee, District Haridwar ... Revisionists

Vs

Smt. Premvati
W/o Sri Babulal
R/o Village Bhagwanpur
Pargana Bhagwanpur
Tehsil Roorkee, District Haridwar ... Respondent

Sri Lok Pal Singh, learned counsel for the revisionists
Sri M.S. Tyagi, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

The revision has been preferred by the revisionists/defendants against the judgment and order dated 10.07.2006 passed by the Additional District Judge, Roorkee, Haridwar in Original Suit No. 49 of 2003 Premvati Vs Naresh Kumar & others.

2. Brief facts of the case are that the plaintiff/respondent filed a suit for injunction against the defendants/revisionists. The trial court after taking into consideration the pleadings adduced by the parties framed certain issues. The trial court vide impugned order dated 10.07.2006 decided the issue No. 1, 2 and 3.

3. The main controversy before the court below was that as to whether the well in the land in question, is the property of the Gaon Sabha or belongs to the plaintiff/respondent. The case of the plaintiff/respondent before the trial court is that the well situated in land in question is her property and she has sought the injunction over the same. The defendants/revisionists have filed the written statement pleadings therein that the well in question belongs to Gaon Sabha and the Gaon Sabha is the necessary party.

4. The trial court decided the issue in negative with the finding that in case if the defendants/revisionists succeed in establishing their case that the well in question belongs to Gaon Sabha then the suit of the plaintiff will fail and accordingly decided the issues against the defendants/revisionists vide judgment and order date 10.07.2006.

5. Feeling aggrieved by the aforesaid impugned order, the defendants has preferred the revision before this Court.

6. Heard Sri Lok Pal Singh, learned counsel for the revisionists, Sri M.S. Tyagi, learned counsel for the respondent and perused the record.

7. It is true that the plaintiff has come with the case that the disputed property belongs to her and the same does not belong to Gaon Sabha. The revisionist has pleaded the case that there is a well in the disputed property which belongs to Gaon Sabha and in order to adjudicate the rights between the parties, it is essential that the Gaon Sabha be made a party in the suit.

8. I am in agreement with the view adopted by the trial court. In case, if the plaintiff fails to establish her case then her suit would fail. It is the burden on the defendant to establish that the disputed well situated in the property in question belongs to Gaon Sabha and in case, if the defendants/revisionists succeed in establishing their case, the suit would automatically fail.

9. I, therefore, do not find any illegality, impropriety or incorrectness in the impugned order passed by the court below.

10. Therefore, the revision lacks merit and is liable to be dismissed.

11. Accordingly, the revision is dismissed in-limine.

(B.C. Kandpal, J.)

21.12.2006
ASWAL